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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

KEVIN BRIGGS,

Plaintiff,

-vs-

GALLATIN COUNTY and JOHN
DOES 1-8, as individuals and in
their official capacity as detention
officers,

Defendants.

Case No.: 18-0010-BU-KLD

**BRIEF IN SUPPORT OF MOTION
TO STAY TIME FOR APPEAL**

COMES NOW the Plaintiff Briggs, through Counsel Ben Darrow and submits this Brief in Support of his motion to stay time for appeal. Plaintiff is requesting an additional 30 days time to file a notice of appeal.

Authority and Request

Federal Rules of Appellate Procedure (4)(a)(4) may stay the time for appeal, but Plaintiff is filing this motion pursuant to FRAP (5) which reads:

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.allows:

Under subsection(i) this motion is made as Judgment was made on May 31st, 2022 and this motion is made within 30 days. Granting this motion is within the discretion of the Court.

Were the Plaintiff to appeal, it would stay any further action by this Court. Were the Court to award attorney's fees perhaps Defendants might seek to appeal. The Defendant pro se has filed a motion for a new trial, and a request to proceed pro se. This motion was timely by the party, though he was represented by counsel. The Plaintiff requests the court grant this motion and extend the time to appeal by 30 days.

“A district court has discretionary power to stay proceedings in its own court...” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). “The power to stay a case is ‘incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel,

and for litigants.” *Halliwell v. A-T Sols.*, Case No. 13:13-CV-2014-H (KSC), 2014 WL 4472724, at *7 (S.D. Cal. Sept. 10, 2014) (quoting Landis, 299 U.S. at 254).

In determining whether to grant a stay pursuant to Landis, courts in the Ninth Circuit weigh the “competing interests which will be affected by the granting or refusal to grant a stay,” including “the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” See *Lockyer*, 398 F.3d at 1110 (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)).

Denying Plaintiff’s motion would add additionally complexity to the case on appeal and leave potential issues unresolved. As a matter of judicial economy and equity the facts weigh heavily on the side of Plaintiff who is held in the Montana State Prison. For these reasons, the Court should exercise its discretion under Rule 4(a)(5) of the FRAP and grant Plaintiff’s Motion for More Time. If this motion is granted, Plaintiff would request any filing of his Notice of Appeal be held in abeyance.

Respectfully submitted this 30 day of June 2022.

DARROW LAW PLLC

By /s/Benjamin M. Darrow
Benjamin M. Darrow
Attorney for Plaintiff

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief in Support of Motion for Attorney's Fees is in compliance with Local Rules. The brief's line spacing is double spaced, and is proportionately spaced, with a 14 point font size and contains less than 3,250 words. (Total number of words 775).

Dated this 30th day of June, 2022.

DARROW LAW, PLLC

By /s/Benjamin M. Darrow
Benjamin M. Darrow
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on 30 day of June, 2022 a true and correct copy of the foregoing ***MOTION TO STAY*** was served upon the following person(s) by the following means:

☒ CM/ECF
☐ Hand Delivery
☐ Mail
☐ Email

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